

**IN THE SUPREME COURT OF BELIZE, A.D. 2013**

**CLAIM NO: 83 of 2013**

**IN THE MATTER OF AN APPLICATION PURSUANT TO PART 56 OF THE  
SUPREME COURT (CIVIL PROCEDURE) RULES**

**BETWEEN**

**DEAN BOYCE**

**CLAIMANT**

**AND**

**THE JUDICIAL & LEGAL  
SERVICES COMMISSION**

**DEFENDANT**

**CLAIM NO: 85 of 2013**

**IN THE MATTER OF AN APPLICATION PURSUANT TO PART 56 OF THE  
SUPREME COURT (CIVIL PROCEDURE) RULES**

**BETWEEN**

**BRITISH CARIBBEAN BANK LIMITED  
LORD MICHAEL ASHCROFT KCMG**

**1<sup>st</sup> CLAIMANT  
2<sup>nd</sup> CLAIMANT**

**AND**

**THE JUDICIAL & LEGAL SERVICES COMMISSION**

**DEFENDANT**

**Keywords:** The Belize Constitution; Conduct of Judge; Complaint into Removal of a Judge for Misbehaviour and/or Inability to perform the functions of office under Section 102(3) of the Belize Constitution; Conduct as a Supreme Court Judge which predates appointment as a Justice of Appeal; Allegation of delays in the delivery of judgments by a Judge. Judge's disregard and violation of the rights of parties and rules of natural justice;

**Before the Honourable Mr Justice Courtney A Abel**

**Hearing Dates:** 24<sup>th</sup> June 2014  
25<sup>th</sup> June 2014  
22<sup>nd</sup> August 2014

**Appearances:**

Mr. Godfrey P. Smith S.C. Counsel for the Claimant in Claim No: 83 of 2013.

Mrs. Magali Marin Young S.C. Counsel for the Claimants in Claim No: 85 of 2013.

Ms. Trienia M. Young Senior Crown Counsel, Counsel for the Defendant in both Claims.

**JUDGMENT**

**Delivered on the 22<sup>nd</sup> day of August 2014**

**Introduction**

- [1] The present claims for administrative orders, though separate and distinct, by agreement of the parties, are being heard together because of their very great similarities. They have been brought under section 102(3) of the Belize Constitution by litigants before the Supreme Court of Belize<sup>1</sup>, who are also Appellants before the Belize Court of Appeal<sup>2</sup> (“the Claimants”), against the Judicial and Legal Services Commission<sup>3</sup> (“JLSC”), the body charged with the constitutional responsibility of undertaking a preliminary investigation into a complaint for the removal of a judge from office.
- [2] These claims seek to impugn the decision made by the JLSC on the 14<sup>th</sup> November 2012, not to refer the conduct of the Hon. Justice of Appeal Awich (“Justice Awich”) to the Belize Advisory Council (“BAC”) for misbehavior and/or inability to fulfill the functions of his office as a Justice of the Court of Appeal, which decision, it is alleged, is unlawful, void and of no effect.
- [3] The Claimants allege that they have been prejudiced as a result of Justice Awich’s misbehaviour and/or inability while he was a Justice of the Supreme Court, and

---

<sup>1</sup> One of 9 Defendants in Civil Claim No. 1042 of 2009 which was appealed in Civil Appeal No. 8 of 2010.

<sup>2</sup> A Respondent in Civil Appeal No. 19 of 2012 in which Justice Awich was sitting.

<sup>3</sup> Established by Section 110E of the Belize Constitution and the membership of which consists of (a) the Chairman of the Public Services Commission, who shall be a member and Chairman; (b) the Chief Justice; (c) the Solicitor General; and (d) the President of the Bar Association of Belize.

that they have interests in appeals which are pending before the Court of Appeal on which Justice Awich may sit as a judge.

- [4] These claims raise the interesting but serious question of the interpretation of Section 102 (3) of the Belize Constitution which deals with the removal from office of a Court of Appeal judge for inability to perform the functions of his office or for misbehaviour.

#### Position and Role of a Judge

- [5] The role of an appointed judge, in the essentially democratic system on which we in Belize model ourselves (of the so-called Westminster Model), may appear to be somewhat of a contradiction - yet it has been proven to work, hedged around, we hope as perfectly as possible, with checks and balances designed to secure the competence, impartiality, independence, and above all, integrity of the persons holding such high office.
- [6] The appointment process in such systems is designed at the front end to secure the above mentioned desired qualities; and if and when this fails a removal process at the back end which is designed to protect the system from such failures.
- [7] At all times between these two processes there exists mechanisms to protect judges, who after all are humans, from other human actors involved in the process, from abuse, in a transparent and accountable way, in the due performance of their office.
- [8] It has been rightly said about the role of the Judge in the landmark Canadian case of **Re Therrien** by Gonthier J, that:

*“the judge is the pillar of our entire justice system , and of the rights and freedoms which that system is designed to promote and protect.....[and] one asked to embody them<sup>4</sup>”*

and that quoting from a paper written by the members of the Canadian Judicial Council, Ethical Principles for Judges (1998), p. 14,:

---

<sup>4</sup> [2001] 2 R. C. S. Page 75, Paragraph 108

*“public confidence in and the respect of the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.”*<sup>5</sup>

- [9] Given that judges are but human it may be considered surprising or even unfair that judges are held to “*virtually irreproachable conduct*”<sup>6</sup> and may be expected to be “*almost superhuman in wisdom, in propriety, in decorum and in humanity*”<sup>7</sup> and are held by the public to be in “*a place apart*”<sup>8</sup>; and yet that still appears to be the position.

#### The Context of the Claims

- [10] The context of the present claim cannot therefore be better framed than by the following words of the Honourable Dr. Abdulai Conteh, former Chief Justice of Belize in the landmark case of **George Merrabux v The Attorney General of Belize & the Bar Association of Belize**<sup>9</sup>, when at its introduction he eloquently stated:

*“News that a judge of the Supreme Court is to appear before anybody for the purposes of investigation is certainly of general public interest. This must be so because of the position of a judge in nearly every society. It has been said rightly so; in my view, that society attributes honour, if not veneration, learning if not wisdom, together with detachment, probity, prestige and power to the office of a judge. Therefore, news of any probe*

---

<sup>5</sup> Ibid.

<sup>6</sup> Ibid

<sup>7</sup> Ibid Page 76.

<sup>8</sup> Ibid.

<sup>9</sup> Action No 65 of 201 at page \*

*concerning a judge would elicit public attention, whether of the concerned or the plainly curious. This may be for the public good.*

*But the public weal itself will be damaged if the news is not handled with care and circumspection; for it may inevitably result in the corrosion of public confidence in the judiciary itself, with deleterious effects on the administration of justice as a whole.*

*The public right to know and to be informed is one which the courts ought always to protect, but this must be balanced with the way that knowledge or information is purveyed. Anything tending to convey unsubstantiated rumours, idle gossip or the salacious must be restrained, particularly in a society such as we have in Belize. which is a veritable fish bowl for almost every public office holder. Otherwise, the right to know becomes corrupted with the zeal to feed frenzy on unsubstantiated rumours and stories. This will be a positive disservice to all Belizeans, for when facts and fiction collide, faction is the result.....*

*It [the application for removal of a Judge] is an important application which involves certain provision of the Constitution of Belize and the relationship between these and some of the other laws of the land. At the heart of the application is the issue of the tenure of office of judges of the Supreme Court [and I might add of the Court of Appeal.]”*

### **Background and Facts of the Case**

[11] The following background and material facts of the present claims, based on the uncontested evidence placed before this Court, should be considered summary findings of facts by me.

[12] Justice Awich is a duly appointed and sitting member of the Court of Appeal of Belize having been elevated/appointed to that office by an instrument signed on the 24<sup>th</sup> April 2012 by the Governor General on the advice of the Prime Minister of Belize, the Hon. Dean Barrow, after consultation with the Leader of the

Opposition, and having been sworn in as a Justice of the Court of Appeal on 16<sup>th</sup> May 2012.

- [13] Justice Awich, previous to his appointment to the Court of Appeal of Belize, had been a Judge of the High Court of Solomon Islands from March 1995 to February 2001, and sat as a Judge of the Court of Appeal of Solomon Islands from March 1998 to February 2001, and had also been appointed and sat as a Supreme Court Judge of Belize from April 2001 until his present appointment.
- [14] Justice Awich had also been an Acting Chief Justice of Belize from October 2010 (on the retirement of the previous Chief Justice the Honourable Dr. Abdulai Conteh) to September 2011 on the appointment of the present Chief Justice. Justice Awich was a candidate, for the substantive office of Chief Justice, but for his age.
- [15] Justice Awich during his long tenure as a Judge has not had his integrity and character called into question and has not been accused of improper conduct apart from the present allegations relating to his alleged lack of judicial acumen and earlier allegations relating to his judgment writing and/or the untimeliness (or the delay) of delivery of judgments.
- [16] In relation to the delivery of judgments, in 2009 the Bar Association tabled a resolution to remove Justice Awich from the Supreme Court for his record of delay in rendering judgments.
- [17] It is to be noted that the complaint in relation to the delay in delivery of judgments was made against Justice Awich and other Judges of the Supreme Court, by the Bar Association of Belize in October 2009.
- [18] The Bar Association called for the resignation of certain other judges, including Justice Awich, on this ground which evoked a strong, and it has been suggested, unprecedented<sup>10</sup> written statement of the Judiciary on the 5<sup>th</sup> October 2009. While explaining the reasons for the delay in the delivery of judgments, the Judiciary made the following comment:

---

<sup>10</sup> By the Prime Minister Hon. Dean O. Barrow in a letter dated 19th April 2012.

*“It is, therefore, with profound disapprobation that the Judiciary views recent moves to even further deepen the attempts to undermine it. These moves included the scandalous and open calls by some factions within the Belize Bar Association to invite political interference in the Judiciary by seeking to “impeach” judges for late delivery of judgments<sup>11</sup>”.*

[19] It would then appear that on 11<sup>th</sup> April 2012, prior to making his decision to advise the Governor General of the appointment of Justice Awich to the Court of Appeal, the Honourable Prime Minister wrote Honourable Francis Fonseca, the Leader of the Opposition, seeking his views on the proposed appointment of Justice Awich to the Court of Appeal.

[20] In turn the Leader of the Opposition then wrote to the President of the Belize Bar Association seeking its views on the proposed appointment.

[21] The Bar Association, in an undated letter, then wrote to the Prime Minister expressing the view *“that it is against the proposed appointment”* of Justice Awich as a Judge of the Court of Appeal, and that:

*“the vast majority of the members of the Association are of the view that Mr. Justice Awich is not a suitable candidate for the post given his well established record of excessive delays in the delivery of judgments, his slow and lax approach to work and a want of judicial acumen.”*

[22] A letter dated 23<sup>rd</sup> April 2012 was then written by the Bar Association and sent to the Honourable Prime Minister informing him that the resolution of the Bar Association against the appointment of Justice Awich to the Court of Appeal (which was enclosed) was passed by 28 votes in favour and none against, with one abstention, and requesting a reconsideration of the appointment for the reasons set out in the resolution. The Resolution was therefore clear in its opposition to the proposed appointment based on the judge’s lack of *“judicial wherewithal”* required of a Justice of Appeal and *“his failure to deliver judgments in a timely manner”*.

---

<sup>11</sup> Ibid.

[23] The Leader of the Opposition then wrote to the Prime Minister opposing the appointment of Justice Awich to the Court of Appeal.

[24] The Honourable Prime Minister in response then wrote to the Hon. Leader of the Opposition by letter dated 19<sup>th</sup> April 2012 stating that he had given careful and anxious consideration to his position but remained convinced that Justice Awich was eminently suitable for the appointment to the Court of Appeal and setting out the reasons for his views. The Prime Minister referred to the matters above<sup>12</sup> and then expressed the following views:

*“It follows that the present views of the Bar Association on the matter of delay in the delivery of judgment are nothing new; they have been ventilated, and answered, before. In any case, this question is unlikely to arise in the Court of Appeal as Justice Awich will be among a panel of three judges and, no doubt, the President (or the Presiding Judge) will set the time frame for delivery of judgments.*

.....  
*I hope the above explanation will serve to allay the concerns you have expressed about Justice Awich’s proposed appointment to the Court of Appeal.”*

[25] It was within this context that the present complaint arose for an investigation into the question of Justice Awich’s removal from the Court of Appeal for misbehaviour or inability.

### The Complaint

[26] On 17 July 2012, the Claimants wrote a letter (“the Complaint”) to the JLSC, seeking that the JLSC consider and recommend to the Belize Advisory Council<sup>13</sup> (“BAC”) the question of removal from office of the Hon. Justice of Appeal Awich for misbehaviour and/or inability to perform the functions of office under Section 102(3) of the Belize Constitution.

---

<sup>12</sup> Paragraphs 13-18 above.

<sup>13</sup>



- [27] The Complaint was a 10 page, closely reasoned document.
- [28] The Complaint was headed “Request under Section 102 of the Belize Constitution for removal from office of Justice of Appeal Awich”.
- [29] After introducing the subject and making its main submission (of the question for the consideration of the JLCS whether Justice Awich should be removed from his office of the Court of Appeal for misbehavior and/or inability and recommend to the BAC the question of whether such removal ought to be investigated), the Complaint was divided into three main Headings as follows:
- (1) Background to the appointment of Justice Awich to the Court of Appeal.
  - (2) Reasons for the request to remove Justice Awich, pursuant to Section 102 of the Belize Constitution.
  - (3) Conclusion which requested the JLSC recommend the question of removal of Justice Awich ought to be investigated by the BAC pursuant to the power set out in the Constitution.
- [30] The reasons for the request to remove Justice Awich from office given were his conduct in the Supreme Court for misbehavior and/or inability to discharge the function of his office, all of which predated his appointment as a Justice of Appeal.
- [31] It was also claimed that such complaint was wrongly disregarded when considering him for such office and as a result of which, it was also claimed, he was not lawfully appointed as a Justice of Appeal and should now, therefore, be investigated by the Belize Advisory Council.
- [32] It is obvious from the Complaint that the reasons given for Justice Awich’s removal had nothing to do with his conduct as a Court of Appeal Judge, but had everything to do with his conduct as a Supreme Court Judge, which it is claimed, renders him unfit for appointment as a Justice of Appeal and suggests that his appointment is thereby unlawful.

- [33] It should be made clear at this juncture that it has not been argued before this court that Justice Awich was unlawfully appointed to his present position of Justice of the Court of Appeal; but merely that he should be investigated for misbehaviour and/or inability to discharge the function of such office of Justice (of the Supreme Court and of the Court of Appeal). I wish to make it clear at this juncture that the present claims herein only deal with the removal process under the Belize Constitution in relation to a Justice of a Court of Appeal and as such this is only what this court will decide.
- [34] The misbehavior complained of included that in relation to the delay of delivery of judgments, such that, it was claimed, amounted to conduct which “*may affect the perceptions of others in relation to the office*”. These other persons, whose perceptions it was claimed, may be affected included the Press and the Bar Association which had questioned several times his ability to carry out his office.
- [35] It was also claimed that the delays in the delivery of judgments would be perceived widely as improper and/or inimical to the interests of the persons or the organization, for whose benefit the functions of the office are performed (the public) if he were to remain in office, and to the due administration of Justice in Belize.
- [36] In relation to the delays in the delivery of judgments, the Complaint relied on decisions of the Court of Appeal of Belize itself<sup>14</sup>, and also the final appellate court of Belize, namely the Caribbean Court of Justice<sup>15</sup>.
- [37] In addition, it was claimed that Justice Awich had demonstrated repeated disregard of his duties as a judge by violating basic rights of the parties and rules of natural justice, and also administered justice in an inefficient and irrational manner<sup>16</sup>.

---

<sup>14</sup> Civil Appeal No. 2 of 2008: Albert Neal v Macaw Farms;; and the case of Civil Appeal No. 26 of 2007: the Attorney General V George Betson and Rupert Martn Marin; and Civil Appeal No. 19 of 2009 Mayan King Limited v Jose Luis Reyes and others.

<sup>15</sup> See Mayan King Limited v Jose Luis Reyes and others [2012] CCJ 3 (AJ)

<sup>16</sup> Relying in particular on the case of Claim No: 1042 of 2009; Claim No: 317 of 2009 and Claim No: 140 of 2012.

[38] It was also claimed that Justice Awich's conduct failed to meet the Bangalore Principles for Judicial Conduct, the international benchmark against which judges are themselves judged<sup>17</sup>.

[39] It was therefore complained that Justice Awich's conduct was such that there was a danger that the judicial office itself will be brought into disrepute, which will directly affect his ability to carry out his present office.

[40] The conclusion reached in the Complaint was that:

*“....Justice Awich should never have been appointed as a Justice of Appeal on account of his misbehavior and further, in the alternative, for inability to discharge the functions of his office, .....The Honourable Prime Minister had (or ought to have had) all of the above information which had either been brought to his attention by the Bar Association, was in publicly available judgments and because the Government, represented by the Attorney General, was a party to the Dunkeld and BSDL cases. In the circumstances, the Honourable Prime Minister should not have advised the Governor General to appoint Justice Awich as Justice of Appeal and nor should the Governor General have made the appointment.”*

[41] The Complaint stated, as already noted, that the Claimants had both been prejudiced as a result of Justice Awich's misbehaviour before the Supreme Court, and that they had interests in appeals which were pending before the Court of Appeal on which Justice Awich might have sat as Judge.

[42] Specifically, the Claimants each stated in the Complaint that they were each one of the nine named individuals in Claim No. 1042 of 2009 against whom injunction proceedings were sought and granted by Justice Awich on an ex parte basis that was subsequently set aside by the Court of Appeal on the basis that the injunction granted was *“so aberrant that it must be set aside upon the ground that*

---

<sup>17</sup> The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002.

*no reasonable judge regardful of his duty to act judicially could have reached it”* and attached a copy of the Court of Appeal’s judgment in this matter<sup>18</sup>.

[43] The Claimants also deposed to be the Respondent in Civil Appeal Nos. 18 and/or No. 19 of 2012 in which Justice Awich is presently sitting.

[44] The Claimants further represented in the complaint, that Justice Awich’s conduct justified his removal from office under S.102 of the Belize Constitution, in particular: extensive delays in delivering judgments, his repeated violations of parties’ basic rights, and his disregard for the rules of sound administration of justice.

[45] By letter dated 24<sup>th</sup> July 2012, the JLSC acknowledged receipt of the complaint and advised that the matter was receiving attention.

[46] On the 24<sup>th</sup> September 2012 the JLSC convened and the complaint was addressed but deferred.

#### The JLSC Decision

[47] On the 29<sup>th</sup> October 2012 the JLSC reconvened and the complaint was considered.

[48] Following consideration of the complaint, it was the view of the JLSC that the elevation of the Hon. Justice Awich to the office of the Justice of the Court of Appeal was the commencement of a new situation, and as such, the issue of the Complaint properly belonged to when Hon. Justice Awich sat as a Supreme Court Judge.

[49] It was decided by the JLSC that the request for the removal of Hon. Justice Awich, in accordance with Section 102 (2) and (3) of the Constitution of Belize, was misplaced and misguided in two ways: (1) In relation to his position of Justice of appeal, it was premature; and (2) In relation to his position as Supreme Court Justice, it was belated.

---

<sup>18</sup> Civil Appeal No. 8 of 2010 dated 14 June 2010, at paragraph 37.

[50] The JLSC approved with one dissenting vote, from the President of the Belize Bar Association, that the Complaint was not to be sent for investigation because it was misconceived; and directed that the Complainants be advised of this decision.

[51] The JLSC also decided that the BAC did not have to be advised on the matter.

[52] By letter dated 14<sup>th</sup> November 2012<sup>19</sup>, the JLSC advised that it determined that: *“the question of removal from office of Justice of Appeal Awich as recommended by the [said] letter of 17 July 2012 is not recommended for investigation by the Belize Advisory Council and the Complaint accordingly be dismissed”* (“the Decision”).

[53] Thus, the JLSC dismissed the request in the Complaint on two separate bases set out in the Decision, namely:

a. *“the Complaint was directed to matters relating to the performance of Justice Awich in his previous position of Justice of the Supreme Court and had no relation to his present office of Justice of Appeal, rendering the Complaint misconceived and premature with respect of the office of Justice of Appeal”*; and

b. *“the decision to appoint a Justice of Appeal resides with the Prime Minister and the Belize Constitution does not countenance the participation of the Commission or the Bar Association in that process”*

#### Application for an administrative order

[54] The Claimants testified to being dissatisfied with the Decision on several bases, and expressed the belief (based on legal advice) that the JLSC erred in law and misdirected itself. In particular:

(a) *the matters raised in the Complaint relate to the fitness of Justice Awich to continue to serve in his current role as a Justice of Appeal. It appears that none of the examples of previous conduct, which are critical and relevant considerations, were even considered by the JLSC in its Decision;*

---

<sup>19</sup> Addressed to the Claimant, Lord Michael Ashcroft and the British Caribbean Bank Limited (the persons making the Complaint).

*(b) the Complaint sought the removal of Justice Awich for misbehaviour and/or inability specifically under s102(3) of the Belize Constitution, in which the JLSC has a constitutionally defined role (in providing advice to the Belize Advisory Council), as opposed to under s101, which concerns judicial appointments. By its reference in the Decision to the appointment process, the JLSC appears to have misunderstood its powers under s102(3); and*

*(c) the matters raised in the Complaint were sufficiently of concern as to have justified a recommendation being made by the JLSC that the BAC “ought to investigate” the question of removal of Justice Awich, as is required by s102(3). Evidential matters as to the relevance of Justice Awich’s prior conduct should have been put forward for consideration by the BAC.*

[55] The Claimants also testified to the Decision having referred to a written response from Justice Awich in relation to the Complaint, a copy of which the Claimants had not received, and also a copy of the letter from the JLSC inviting Justice Awich’s comments. The Claimants also stated their concern at not being given the opportunity to respond to this correspondence.

[56] Furthermore, the Claimants testified to it appearing that the Solicitor General of Belize was a member of the JLSC at the time the Decision was issued (14<sup>th</sup> November 2012), and that at about the same time, the Solicitor General had sworn an affidavit (filed on 7<sup>th</sup> December 2012) in support of the Attorney-General of Belize in interlocutory proceedings, challenging the majority decision of the Court of Appeal in Civil Appeal No. 19 of 2012<sup>20</sup> (in which the Claimants were Respondents) declining to hold that Justice Awich should have recused himself because of the Complaint.

[57] The Claimants testified that the apparent participation by the Solicitor General in assessing the Complaint which the Claimants had filed, while simultaneously filing evidence against him in proceedings challenging the decision of Justice

---

<sup>20</sup> This being the same case referred to above in Paragraph \*.

Awich to recuse himself, gives rise to serious concerns as to procedural fairness and apparent bias, and continues to do so, and that the proceedings in Civil Appeal No 19 of 2012 as ongoing.

[58] In any event, Justice Awich has recently been reappointed a Justice of the Court of Appeal until 2022 (when he reaches the age of retirement) and his appointment has been backdated to 16<sup>th</sup> May 2014.

[59] The Claimants testified to the reappointment of Justice Awich following the delivery by Justice Awich on the 15<sup>th</sup> May 2014 of the majority decision in favour of the Government in Civil Appeal No: 18, 19<sup>21</sup> and 21 (following a delay of over 18 months and being the last day of his term in office), in which the Claimants were Appellants in Civil Appeal No. 19 (in person or in a representative capacity)

[60] In light of all that was testified to by the Claimants they requested that this Honourable Court grant the reliefs set out in the Fixed Date Claim form initiating the present proceedings.

### **The Court Proceedings**

[61] By Fixed Date Claims for an Administrative Order, dated and filed respectively on the 12th and the 13th February 2013, the Claimants seeks against the JLSC (as Defendant) the following reliefs:

- (a) *A Declaration that the decision of the Defendant dated 14<sup>th</sup> November 2012 to dismiss the Claimant's complaint against Justice of Appeal Awich made pursuant to Section 102(3) of the Belize Constitution ("the Complaint") is unlawful, void and of no effect;*
- (b) *A declaration that the Solicitor General's continued participation in any decision of the Judicial and Legal Services Commission regarding the Complaint is unlawful on the grounds of apparent bias;*
- (c) *Such further or other relief as the Court deems just.*
- (d) *Costs.*

---

<sup>21</sup> The same decision mentioned in note 12 above.

- [62] It is to be noted that the above reliefs are sought in public law against the JLSC, as a public body, only for administrative orders and under the Constitution by way of declarations and do not include a claim for remedies by way of prerogative writs or orders.
- [63] The Fixed Date Claims were supported respectively by the First Affidavit of the Claimants sworn to and filed on the 12th February 2013 and the First Affidavit of Stewart Howard sworn to and filed on the 13th February 2013.
- [64] An application was filed on the 14th March 2013 for the consolidation of the present Claims, but by consent of the parties it was ordered on the 9<sup>th</sup> April 2014, pursuant to Part 56.11(2)(e) of the CPR 2000 that these claims merely be heard together rather than be consolidated.
- [65] On the 19th March 2013 the JLSC filed the First Affidavit of Justin Palacio which had been sworn to by the deponent as Secretary of the JLSC on the 18th March 2013 in which he deposed to the JLSC considering the Complaint and arriving at the Decision.
- [66] On the 8th May 2013 the Claimants in each Claim filed substantial Skeleton Arguments and the JLSC subsequently presented to the court substantial Skeleton Arguments on its behalf dated 25th June 2013.
- [67] Shortly before the hearing of the present Claims, on the 20<sup>th</sup> June 2014, the Claimants filed the Third Affidavit of the 1<sup>st</sup> Claimant<sup>22</sup> and the 2<sup>nd</sup> Affidavit of Stewart Howard, which sought to bring the evidence up to date. The JLSC did not have any objection to the factual matters being brought up to date but objected to the late filing of this affidavit and also to the other matters in the attached newspaper reports and to its relevance and submitted that its prejudicial effect outweighed its probative value.
- [68] The Court at the hearing of the Fixed Date Claims herein, offered the Defendant an opportunity to respond to the Third Affidavit on account of its lateness. This response was subject to the question of costs being considered and possibly being

---

<sup>22</sup> The Second Affidavit of the 1st Claimant having been filed in support of the Application for Consolidation.



granted in their favour for the adjournment of the matter. But the JLSC indicated, through its Counsel, that they did not wish to respond to this Affidavit. The Court therefore ruled that this Affidavit was to be admitted subject to such weight being attached to it as the court deemed fit.

[69] At the hearing of the Fixed Date Claims herein the parties indicated that there was no significant factual disagreement between them and agreed that the Claims should proceed without the need of cross-examination of witnesses; as it was felt they largely turn on the resolution of the significant and weighty matters of law.

### **The Issues**

[70] The issues (largely legal) for determination of these Claims are as follows:

(a) Whether the JLSC erred in law and/or misdirected itself in the exercise of its undoubted constitutional discretionary power in relation to the question of whether or not to refer to the BAC for determination/investigation, the question of the removal of Hon. Justice of Appeal Awich. In determining this issue the following questions are involved:

- a. Was the question of the removal of the Hon. Justice of Appeal Awich premature with regards to his seat on the Court of Appeal?
- b. Could the evidence put before the JLSC amount to misbehaviour?
- c. Did the question of inability to discharge the functions of the office relate to the office of the Court of Appeal?
- d. Did the JLSC properly exercise its discretionary power with regards to the passing of complaints to the BAC?

(b) Whether the JLSC erred in law and misdirected itself as to its powers in the following four respects:

- a. Did the JLSC fail to take into account Justice Awich's prior conduct in its consideration of the matter?
- b. Did the JLSC act beyond its powers in preventing Justice Awich's prior conduct from being considered by the BAC?

- c. Did the JLSC misunderstand its constitutional role regarding the removal of Justices of Appeal from office?
- d. Given the seriousness of the matters complained of was it irrational for the JLSC not to refer the matter to the BAC?

[71] The central question for determination is whether Justice Awich's conduct as a Justice of the Supreme Court, in the circumstances of the present case, is relevant to the consideration and determination of the question of whether or not the JLSC should have referred to the BAC for investigation, the Complaint for his removal as a Justice of the Court of Appeal.

[72] I should add that the question raised in the Claim of the Solicitor General's continued participation in any JLSC decision regarding the Complaint is unlawful on the grounds of apparent bias, has not been argued before me and I have therefore concluded that this is not a live issue between the parties and therefore not considered it in this Judgment.

### **The Law**

[73] **Section 101(1) and (2) of the Constitution of Belize** provides:

*(1) The Justices of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition, for such period as may be specified in the instrument of appointment.*

*(2) A person shall not be qualified to be appointed as a Justice of Appeal unless either-*

*(a) he holds or has held office as judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; or*

*(b) he is qualified to practise as an attorney-at-law in a court in Belize or as an advocate in a court in any other part of the Commonwealth*

*having unlimited jurisdiction in either civil or criminal causes or matters and has been so qualified for not less than fifteen years.*

- [74] Justices of Appeal are therefore appointed by the Governor General, "*acting in accordance with advice from the Prime Minister given after consultation with the Leader of the Opposition*".
- [75] It may be a desirable check or balance in our system of democratic governance to have the JLSC involved in the appointment process of a Court of Appeal (or indeed any other) Judge by for instance recommending names to the Prime Minister. But under the existing constitutional arrangement in place there is no such arrangement in place.
- [76] Thus, and it would appear, that, subject to the requirement to consult with the Leader of the Opposition, a Prime Minister's power to advise the Governor-General to appoint a Court of Appeal Judge is relatively unfettered provided that the Prime Minister appoints someone from among the persons qualified under the Constitution.
- [77] In relation to the removal of a Court of Appeal Judge **Section 102 (2)(7) of the Constitution of Belize** provides as follows:

*"(2) A Justice of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.*

*(3) A Justice of the Court of Appeal may be removed from office if the question of his removal from office for inability to perform the functions of his office or for misbehavior has been referred to the Judicial and Legal Services Commission in writing and the Judicial and Legal Services Commission, after considering the matter, recommends in writing to the Belize Advisory Council that the question of removal ought to be investigated.*

*(4) For the purpose of investigating the question of the removal of a Justice of the Court of Appeal referred to it under subsection (3), the Belize Advisory Council shall:-*

*(a) sit as a tribunal in the manner provided in section 54 of this Constitution; and*

*(b) enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether the Justice of the Court of Appeal should be removed from office in accordance with this section.*

*(5) If the question of removing a Justice of Appeal from office has been referred to the Belize Advisory Council under the preceding subsection, the Governor-General may suspend the Justice from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the Belize Advisory Council advises the Governor-General that the Justice should not be removed from office.*

*(6) If the Belize Advisory Council advises the Governor-General that the justice of the Court of Appeal ought to be or not to be removed from office, the Governor-General shall notify the Justice in writing accordingly.*

*(7) The power to remove a Justice of the Court of Appeal from office for inability to perform the functions of his office or for misbehaviour vest in the Governor-General, acting in accordance with this section.”*

[78] The exact same test is used both for the removal from office of a Supreme Court Judge and a Court of Appeal Judge, but by and under a different provision<sup>23</sup>.

[79] As it has been submitted by Counsel for the Claimants, and it is important to note at the outset, the JLSC’s constitutional role, in relation to removal of judges, does not require any consideration by the JLSC of such removal but instead only whether or not the question of removal ought to be investigated.

[80] The Constitutional process therefore requires the following:

---

<sup>23</sup> See s 98(3).

- (a) The question of the removal from office of a Justice of Appeal (whether for misbehavior or inability to perform the functions of his office) must be referred to the JLSC in writing (s 102(2)).
- (b) The JLSC must consider the matter and then may or may not recommend to the BAC that the question of removal "ought to be investigated" (s 102(3)).
- (c) The BAC, however, must enquire into the matter and report on the facts to the Governor General; and advise the Governor General whether or not the Justice of Appeal should be removed from office (s 102(4)(b)).
- (d) Whatever the result of the enquiry by the BAC it must advise the Governor General that the Justice of Appeal ought or ought not to be removed from office, the Governor General must then notify the Justice of Appeal (s 102(6) and (7)) of the position.
- (e) The power of removal rests with the Governor-General who it would appear must base such decision on the report of the BAC.

[81] As has been correctly, in my view, noted by the former Chief Justice of Belize, Dr. Abdulai Conteh in the case of **George Merrabux v The Attorney General of Belize & the Bar Association of Belize**<sup>24</sup> in respect of an equivalent provision of the Constitution of Belize, there has to be a trigger stage for the removal or impeachment proceedings of a Judge, which on the terms of the present Constitution of Belize is a consideration by the JLSC of such a question of inability to perform the functions of his office or of misbehavior, and a referral by it (the JLSC) of either or both such questions to the BAC.

[82] The Honourable Abdulai Conteh CJ in looking at the need for the consideration of the matter by the JLSC, correctly relied, with approval, on the decision of Megaw J in the English case of **Hanks v Minister of Housing and Local Government**<sup>25</sup>:

---

<sup>24</sup> Action No 65 of 201 at page 9

<sup>25</sup> (1963) 7 All ER 47 at page 55.

*“A ‘consideration’ I apprehend, is something which one takes into account as a factor in arriving at a decision. I am prepared to assume ... that, if it can be shown that an authority exercising a power has taken into account as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power, then the exercise of the power, normally at least, is bad. Similarly, if the authority fails to take into account as a relevant factor something which is relevant, and which is or ought to be known to it, and which it ought to have taken into account, the exercise of the power is normally bad. I say ‘normally’ because I can conceive that there may be cases where the factor wrongly taken into account, or omitted, is insignificant, or where the wrong taking-into-account, or omitted is insignificant, or where the wrong taking-into-account, or omission actually operated in favour of the person who later claims to be aggrieved by the decision.”*

[83] The Honourable Abdulai Conteh CJ then noted, again correctly in my view, that the JLSC, has to be satisfied:

*“that the matter is sufficiently serious to warrant referral to the BAC. Both in deciding what material is necessary for such referral and in deciding whether to make such a referral at all the [JLSC] must act fairly and in conformity with the rules of natural justice.*

*It is not in my view, every fanciful complaint or material that the [JLSC] must refer to the Belize Advisory Council – [it] has to look at the material or complaint to see if it is sufficiently serious to warrant referral. Having done so but **before** referral [it] ought, **ex debito justitiae** in keeping with natural justice, to hear what, if anything the particular judge may have to say, on the material or complaint; [it] must inform the judge of the complaint or material. Failure to observe this basic, decent and fair procedure would, in my view, and on the authorities, vitiate any referral by the [JLSC] to the Belize Advisory Council. This failure would infect every subsequent step thereafter including the inquiry as a tribunal by the*

*Belize Advisory Council into the matter, down to and including any suspension of the judge from performing the function of his office.*

.....

*I would therefore hold that under [the then relevant provisions] the consideration by the [JLSC] of the question of the removal of a judge is stamped with the requirements of natural justice. which.....in view of the stakes involved not only for the judge concerned, but for the higher interest of the public itself and the legal and constitutional stipulation of the independence of the judiciary includes.....be exercised [by a deliberative process] and must be attended by the requirements of natural justice<sup>26</sup>”.*

[84] The Honourable Abdulai Conteh CJ later on in his judgment made it clear that such fair play involved:

*“observing procedural fairness such as letting the judge in question know what is under consideration and having the opportunity to make his own representations thereon ... [the JLSC] would have lawfully discharged [its] functions and cannot be seriously faulted if [it] then refers the question of removal to the Belize Advisory Council.”*

[85] The Honourable Abdulai Conteh CJ then opined as follows:

*“Of course, it is not every fanciful allegation against a judge that the [JLSC] would refer to the Belize Advisory Council, but to require [it] to investigate their validity is to encumber [it] unnecessarily. The validity, veracity or otherwise of the allegations is for the Belize Advisory Council, the body that is constitutionally charged with the inquiry into the matter and to report on the facts. This institution of the Constitution, the Belize Advisory Council, is the fact-finding and reporting body charged with the responsibility of establishing the validity or veracity or otherwise of the allegations by an enquiry into them.*

---

<sup>26</sup> George Merrabux v The Attorney General of Belize & the Bar Association of Belize Page 15 of 37.

*However, I think there must be present some indicia of investigation by the [JLSC] into allegation leveled against a judge. It may not be the full-blown battle royale of the adversarial process or one involving the forensic skills of a sleuth, but in the process of considering whether the question of the removal of a judge ought to be investigated by referral to the Belize Advisory Council, the [JLSC] must surely do some probing, some investigation to establish that the allegations are not merely fanciful or hopelessly groundless. In this process, the [JLSC] must, in consonance with natural justice and fair play, hear from the judge or give him an opportunity to put his own side or version of whatever the allegations may be about. This requirement would be fulfilled if the [JLSC] writes to or informs the judge about the allegations. This act itself is, in opinion, investigatory.*

*But in my view, this investigation by the [JLSC] at the consideration stage of the question of the removal of a judge is not to establish the validity of the allegations, but I think to ensure that they are not fanciful or of the crack-pot variety or hopelessly groundless.”*

- [86] Most of what the Honourable Abdulai Conteh CJ stated is, in my view highly commendable and I believe consonant with the law; but with some diffidence and with all due respect to his well-known sagacity, eminently evident from this self-same judgment under review, the standard expressed by him of what has to be reached by the JLSC to warrant a referral, in relation to any question under consideration by the JLSC in relation to any possible referral does not, in my view, state the correct position, where he stated that it must not be “*merely fanciful or hopelessly groundless*” or the JLSC must be satisfied “*to ensure that they are not fanciful or of the crack-pot variety or hopelessly groundless*” is, in my view, pitching the preliminary enquiry stage or gate-keeping function of the JLSC decidedly too low a hurdle or wide an opening (as the case may be).
- [87] In my view, the JLSC in deciding whether to refer a matter to the BAC ought to be at least satisfied “*that the complaint has prima facie sufficient basis in fact and*



*must be sufficiently serious*<sup>27</sup>) and/or that there is potentially credible evidence or material of inability or of serious misconduct, to warrant an investigation of a judge before making such a referral<sup>28</sup>.

[88] The question of the fairness of the process would naturally be an inherent procedural requirement which will then undoubtedly appear on the procedural horizon for the JLSC as it moves forward towards any determination of whether a referral to the BAC is warranted

[89] The BAC, as correctly noted by the learned CJ, then and only then, if a question of the removal of a Judge arises, after an investigation, may advise of such a removal; or on the other hand “*may well advise that the judge should not be removed from office*<sup>29</sup>” bearing in mind that “*it is not every peccadillo or some humdrum sin or transgression to which ever mortal is heir to*” that would constitute “misbehaviour” for the purpose of making a recommendation for the removal from office<sup>30</sup>.

[90] Counsel for the Claimants, as I have earlier noted, has also correctly observed that the JLSC does indeed, in the removal process of a Judge, have a clear, distinct and defined role.

[91] It is in such a context that the case of **Therrien v Canada (Minister of Justice) and Anor**<sup>31</sup> becomes relevant, which case concerned a decision of the Supreme Court of Canada in which the appellant's (judge's) failure to disclose information that was prejudicial to him (namely a prior conviction) to members of the relevant judicial appointment committee. The appellant appealed the decision to remove him from office on the basis that the conduct complained of took place before his appointment as judge, arguing specifically that such conduct was under the exclusive jurisdiction of the discipline committee of the Barreau du Quebec (the

---

<sup>27</sup> See Rees Et Al V Crane TT 1994 PC 1 per the decision of Lord Slynn of Hadley page 14.

<sup>28</sup> See the lead Judgment of the Privy Council by Lord Bingham of Cornwell and Lord Walker of Gestingthorpe in the case of **The Honourable Satnarine Sharma v Carla Browne Antoine and others** in the appeal from the Court from the Court of Appeal of the Republic of Trinidad and Tobago at paragraph 27 of page 15.

<sup>29</sup> George Merrabux v The Attorney General of Belize & the Bar Association of Belize Page 12 of 37.

<sup>30</sup> Ibid Page 36 of 37.

<sup>31</sup> [2001] 2 R.C.S. [Boyce Authorities, TAB 1] & [2001] 5 LRC 575

professional body of the Quebec Bar), and not the Conseil de la Magistrature du Québec (the judicial enquiry body whose recommendation led to the Court of Appeal's decision to remove him). The Court held that even though the conduct occurred before the appellant's judicial appointment, the Conseil had jurisdiction to investigate it because whether or not the actions were prior to the appellant's appointment, they were relevant for the purposes of the applicable statute, the Courts of Justice Act. The Court therefore held that the relevant body had jurisdiction to investigate the appellant's conduct prior to his appointment as a judge.

[92] As we see in the case of **Therrien v Canada (Minister of Justice) and Anor**, the Courts of Justice Act does not distinguish between the period before or after appointment, but simply authorize the Conseil to “*receive and examine any complaint lodged against a Judge...*”. Accordingly, prior conduct was expressly considered relevant to the Conseil's consideration of the complaint.

[93] It is to be noted that in the case of **Therrien v Canada (Minister of Justice) and Anor**, Gonthier J relevantly stated at paragraph 143:

*“What must now be determined is whether the appellant was dismissed owing to the mere fact that he was convicted of a criminal offence. The complaint lodged by the minister against the appellant refers to failure to disclose important information concerning the trouble he was in with the law, and not to the fact that he had a conviction.... It is also plain from the report of the Court of Appeal that the appellant's failure to disclose that he had a criminal record was the only reason that could have been regarded as justifying its recommendation for removal...”*

[94] Gonthier J also significantly stated at paragraph 147:

*“The public's invaluable confidence in its justice system, which every judge must strive to preserve, is at the very heart of this case. The issue of confidence governs every aspect of this case, and ultimately dictates the results. Thus, before making a recommendation that a judge be removed, the question to be asked is whether the conduct for which he or she is*

*blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office (see Friedland pp 80-81)."*

[95] The case of **Clarke v Vanstone**<sup>32</sup> (cited with approval in the authoritative Privy Council appeal case from the Court of Appeal of Grenada: **Lawrence v the Attorney-General of Grenada**<sup>33</sup>), coming from the Federal Court of Australia, contains, in addition, much useful elucidation about "misbehavior" and the meaning thereof in the context, is not dissimilar from the words used in **the Constitution of Belize** where, in that case, the Minister of Immigration and Multicultural and Indigenous Affairs had power to suspend a Commissioner on the ground of misbehavior and purported to do so in relation to the Claimants, Clark, who had brought judicial review proceedings to challenge his suspension.

[96] The case of **Clarke v Vanstone** also concerned "*the inability to perform the functions of office*" and the Federal Court of Australia held that:

*"in order to constitute misbehavior by the holder of an office, the conduct concerned need not be criminal conduct and need not occur in the course of the performance of the duties of office".*

[97] Gray J opined in relation to the meaning of the word 'misbehaviour'<sup>34</sup>:

*"One proposition can be gleaned from these limited authorities. It is that the meaning to be given to the word "misbehaviour" will depend entirely upon the context of the legislation provision in which the term is used. There is no universal meaning of misbehaviour when it is used in a state or other legislative instrument. When a statute provides for removal from office a statutory officer on the ground of misbehavior, it takes its meaning from the statutory context."*

---

<sup>32</sup> Paragraph 78. [2004] FCA 1105 [Boyce Authorities, TAB 2]

<sup>33</sup> Privy Council Appeal No 14 of 2005; [2007] UKPC 18.

<sup>34</sup>

[98] Gray J went on, in paragraph 85, to rely on a quotation from a member of the Parliamentary Commission of Inquiry, the Hon Andrew Wells QC:

*“...to force misbehavior into the mould of a rigid definition might preclude the word from extending to conduct that clearly calls for condemnation...but was not ...could not have been foreseen when the mould was cast.”*

[99] Gray J then set out the ingredients of the conduct of misbehavior under review as follows:

*“It is clear from these expressions of opinion that, in order to constitute misbehavior by the holder of an office, the conduct concerned need not be criminal conduct and need not occur in the course of the performance of the duties of the office. For present purposes, the important proposition to be drawn from these expressions of opinion is that, in a case in which the term ‘misbehaviour’ is used with reference to the holder of an office, the content of its meaning is to be determined by reference to the effect of the conduct on the capacity of the person to continue to hold the office. In turn, the capacity to continue to hold an office has two aspects. The conduct of the person concerned might be such that it affects directly the person’s ability to carry out the office. Alternatively, or in addition, it may affect the perceptions of others in relation to the office, so that any purported performance of the duties of the office will be perceived widely as corrupt, improper or inimical to the interests of the person, or the organization, for whose benefit the functions of the office itself will be brought into disrepute as a result of the conduct of its holder, if that is likely to be the case, then the conduct is properly characterized as misbehavior for the purposes of the relevant legislation.”*

[100] In the case of the ‘**Hearing on the Report of the Chief Justice of Gibraltar**’<sup>35</sup>, the Privy Council had to consider whether the actions of the Chief Justice rendered his appointment untenable. The Privy Council authoritatively observed that Lord Scott, giving the majority opinion of the Privy Council in the case of

---

<sup>35</sup> Referral under s. 4 of the Judicial Committee Act 1833; [2009] UKPC 43 [Boyce Authorities, TAB 4].

**Lawrence v the Attorney-General of Grenada**, noted, with approval, the following four ingredients that can be deduced from this last quoted passage:

*“i) Has the [judge’s] conduct affected directly his ability to carry out the duties and discharge the function of this office?*

*ii) Has that conduct adversely affected the perception of others as to his ability to carry out those duties and discharge those functions?*

*iii) Would it be perceived to be inimical to the due administration of justice in Gibraltar if the [judge] remains in office.*

*iv) Has the office of [judge] been brought into disrepute by the [judges] conduct?*

[101] It is to be noted that Lord Phillips also, relevantly and authoritatively stated at paragraph 16:

*“We have not found the issue of standard of proof an easy one. Judicial independence is of cardinal importance. There is a case for saying that a judge should not be removed for misconduct unless this is proved to the criminal standard – see the comments of Lord Mustill at paras 81 to 83 of the Report of the tribunal of 14 December 2007 into the question of removing from office the Chief Justice of Trinidad and Tobago pursuant to the provisions of the Constitution of the Republic of Trinidad and Tobago that are similar to s 64 of the 2006 Order.”*

[102] It is of some interest to observe that Lord Hope significantly, one might think, stated, in a minority view of the case of the ‘**Hearing on the Report of the Chief Justice of Gibraltar**’, that where the conduct complained of is such, that it is liable to bring the office into disrepute it can be popularly characterized as “misbehaviour”.

[103] Lord Hope in the same minority Judgment also stated:

*“I think that the phrase “wholly unfitted to perform judicial functions” captures the essence of what the word [inability] means in this context. It sets a high standard. But it seems to me right, if the rule of law is to be*

*preserved, that it should do so. The rule of law is in the hands of the judges, and it is of crucial importance that their independence should be protected against allegations which do not achieve that standard.”*

[104] But even if the conduct can be so characterized the question remains whether it is conduct of such gravity, applying the standard referred to in **Re Therrien**<sup>36</sup>, to warrant a recommendation that a judge be removed from office.

[105] In so far as “inability” is concerned, and as noted by the Counsel for the Defendants in the present cases, Lord McCluskey observed, in the case of **Steward v Secretary of State for Scotland**<sup>37</sup>, in the context of a reclaiming motion called before an Extra Division to consider whether the appellant was “*unfit for office by reason of inability, neglect of duty or misbehaviour*”, the finding was not “misbehaviour” but “a character flaw which amounted to “inability” :

*“It is a case, however, which – on the factual basis held established by the senior judges – illustrates that incompetence may play a part in assessment of several of the relevant matters, including unfitness. Incompetence, for example, may be a feature, symptom or consequence of “neglect of duty”. A judge who persistently neglected to take any steps to keep up with the law, or to discover it when required by a particular case to do so, who constantly, through laziness, delayed or neglected to issue judgments and, when he did, showed that he had not grasped even the simplest of issues, might well have to face a complaint of neglect of duty inferring unfitness for office.”*

[106] In the same case of **Steward v Secretary of State for Scotland**, aff’d<sup>38</sup>, before the House of Lords, Lord Jauncey of Tullichettle authoritatively stated:

*“I do not find it necessary, nor would it be useful, to attempt an exhaustive definition of the meaning of “inability”. Suffice to say that that mere lack of efficiency or competence per se is very unlikely to measure up to*

---

<sup>36</sup> [2001] 5 LRC 575

<sup>37</sup> 1996 SC 271.

<sup>38</sup> 1998 SC (HL) 81.

*inability. As Lord Causfield said in the Inner House (Sewart v Secretary of State for Scotland 1996 SLT 1203 at 1213 E: “... what has to be shown is that he is not really capable of performing the proper function of a judge at all.”*

[107] It is also to be noted that Lord Phillips relevantly in the ‘**Hearing on the Report of the Chief Justice of Gibraltar**’ at paragraphs 205 and 206 stated:

*“205. ....If for whatever reason a judge becomes unable to perform his judicial function it is desirable in the public interest that there should be power to remove him, provided always that the decision is taken by an appropriate and impartial tribunal.*

*206. We consider that it was open to the Tribunal to proceed on the basis that defect of character and the effects of conduct reflecting that defect, including incidents of misbehaviour, were cumulatively capable of amounting to “inability to discharge the functions of his office” ...It remains to consider their finding that, on the acts of this case, such inability had been demonstrated in the case of the [judge].”*

[108] Courts have thus been willing to take a wide view of what constitutes “misbehaviour” and what constitutes “inability to perform the functions of office”. Conduct outside that of the strict performance of a Judge’s present office has clearly been viewed as a relevant consideration in the courts’ assessment of whether these tests for removal of a judge have been met. In the case of **Da Costa v Minister of National Security & Ors**<sup>39</sup>, the High Court of the Bahamas relevantly found that the decision of the Director of Immigration to require the appellant to leave the Bahamas could be successfully reviewed on the grounds of Wednesbury unreasonableness (i.e. irrationality), because it was not a decision that could be reconciled with all the material circumstances and could not be supported by the evidence before the Director. In particular, the Court found that the Director had failed to take into account relevant and material matters which she should have scrutinized.

---

<sup>39</sup> (1986) 38 WIR 1.

[109] Similarly, in the present cases, it has been submitted by Counsel for the Claimants, with some force and, in my view, justification, that the failure to take into account significant instances of prior conduct was an irrational decision, particularly given the JLSC's limited mandate, as a body conducting a preliminary enquiry, and considering whether to refer matters to the BAC for further investigation.

[110] In addition, it is to be also noted, that the stringency of the review is increased where the subject matter is particularly important<sup>40</sup>.

[111] In the case of **Padfield v Minister of Agriculture, Fisheries and Food**<sup>41</sup> Lord Diplock, as has been noted by Counsel for the Defendants, observed:

*“It seems to me that the unexpressed major premise of the Divisional Court’s judgment is that the Act confers upon persons affected by a marketing scheme a right to have any bona fide complaint as to the operation of the scheme considered by a committee of investigation. But this the Act does not do. The only right is to have referred to the committee such complaints as the Minister in his discretion thinks should be so referred. He did not think that this one should, and, since it has not been shown that in so thinking he erred in law, there is an end of the matter.”*

### **The factual and legal contentions (submissions) of the Claimants**

#### **Prior conduct – failure to take into account relevant considerations**

[112] The Claimants contend that the matters raised in the Complaint relate to the fitness of Justice Awich to continue to serve in his current role as a Justice of Appeal (none of which previous conduct cited in the Complaint were considered at all by the JLSC in its Decision); and it has been submitted on his behalf that these matters are both relevant and critical to the JLSC's decision as to whether the JLSC should refer the matter to the BAC.

---

<sup>40</sup> The Northern Jamaica Conservation Association v The Jamaica Environment Trust and Ors, Claim No. HCV 3022 of 2005 (SC) at paras 21 and 25).

<sup>41</sup> [1968] A.C. 997 at 1016



[113] In particular, it has been submitted that:

- a. It is evident that the same or similar factual considerations are relevant to the assessment of “misbehavior” and the “ability to perform the functions of office” regardless of whether the person concerned is a Justice of Appeal or a Supreme Court Judge.
- b. These considerations are of particular importance when the matter at issue, (i.e. the suitability of a Justice of Appeal) is of such public importance. The importance of maintaining public confidence in the judiciary requires that the JLSC should not be limited by being unable to assess prior conduct, particularly where that prior conduct is judicial conduct as a Justice of the Supreme Court.
- c. Prior conduct is particularly relevant where the complaint relates to a Justice of Appeal who has only held that role for a limited period of time.
- d. The Claimants rely on and endorse the minority view recorded in the JLSC’s Decision that *“the strict categorization of the Complaint omits to take into account the allegations of unmerited decision-making on the part of Justice Awich potentially linked to his elevation, thereby compromising the high standards expected of the Judiciary and his moral authority to sit as a Justice of Appeal”*.

[114] As a result, it has been submitted, that the suggestion of relevant, prejudicial prior conduct would be expected to be one of the factors on which the JLSC should recommend to the BAC that the matter of Justice Awich’s conduct ought to be investigated.

[115] As such, it has been submitted, that in light of its limited mandate, and particularly given the importance of public confidence in the judiciary, the JLSC failed to take into account critical relevant considerations in making its Decision.

Prior conduct – acting ultra vires JLSC powers

[116] It has been contended by the Claimants that the JLSC not only refused to refer the matter to the BAC on the basis that it ought to be investigated, but specifically prevented the BAC from even being aware that the Complaint had been made.

[117] The Claimants also submitted that the JLSC specifically determined that it would not advise the BAC of the matter

[118] It is also contended that as the JLSC does not have the power to determine whether the grounds of misbehavior or inability to perform the functions of office are made out in any particular situation, and as the JLSC's specific role is simply to refer matters to the BAC where the question of removal "ought to be investigated", that by excluding any reference to Justice Awich's prior conduct, the JLSC has acted beyond its powers and precluded the BAC from properly considering a valid and substantiated claim.

[119] It was also submitted that by failing to refer the matter to the BAC, the JLSC has, incorrectly, unjustifiably and effectively prevented the BAC from considering any of Justice Awich's prior relevant conduct, and they submit, that accordingly not only failed to fulfill its own constitutional role, but has usurped the BAC's constitutional role, and has thereby acted ultra vires its powers and therefore the JLSC's decision should be nullified on this basis.

Misdirection in law (appointment vs. removal)

[120] The Claimants contends that as the Complaint sought the removal of Justice Awich for misbehaviour and/or inability specifically under s102(3) of the Belize Constitution, in which the JLSC has a constitutionally defined role (in providing advice to the BAC), then constitutional process requires the following:

- a. The question of the removal from office of a Justice of Appeal (whether for misbehavior or inability to perform the functions of his office) must be referred to the JLSC in writing (s 102(2)).
- b. The JLSC must consider the matter and then recommend to the BAC that the question of removal "ought to be investigated" (s 102(3)).

- c. The BAC must enquire into the matter and report on the facts to the Governor General; and advise the Governor General whether the Justice of Appeal should be removed from office (s 102(4) (b)).
- d. If the BAC advises the Governor General that the Justice of Appeal ought to be removed from office, the Governor General must notify the Justice of Appeal (s 102(6) and (7)).

Irrationality – Matters sufficiently serious to justify investigation

[121] The Claimants submitted that not only were the matters referred to in the Complaint directly addressed by the Court of Appeal and Caribbean Court of Justice in a number of judgments criticising the conduct of Justice Awich over a number of years, but they had also been raised independently by the Belize Bar Association and senior members of the Bar.

[122] Accordingly, it was submitted that the matters raised in the Complaint were sufficiently of concern as to have justified a recommendation being made by the JLSC that the BAC "ought to investigate" the question of removal of Justice Awich, as is required by S. 102(3).

[123] It was also submitted by the Claimants that given the seriousness of the Complaint, it was irrational for the JLSC not to make such a recommendation.

[124] In addition, it was submitted that as the stringency of this Court's review is increased where the subject matter is particularly important<sup>42</sup>, and as the present case concerns a matter of fundamental and constitutional importance (the process for removing Justices of Appeal from office) that the Court ought to (they suggested "must") adopt a higher standard of review in respect of the JLSC's decision. It was therefore submitted that it was irrational for the JLSC not to refer the matter to the BAC.

[125] In particular, it was finally submitted that as questions concerning the evaluation of the evidential matters were put forward, and the evaluation of the relevance of

---

<sup>42</sup> See above at Note \* The Northern Jamaica Conservation Association v The Jamaica Environment Trust and Ors, Claim No. HCV 3022 of 2005 (SC) at paras 21 and 25 [Boyce Authorities, TAB 6])

Justice Awich's prior conduct should have been put forward for consideration by the BAC, the Court ought to nullify the JLSC's decision on this basis.

**The factual and legal contentions (Submissions) of the JLSC**

- [126] It was submitted that the JLSC did not err in law and did not misdirect itself in the exercise of its discretionary power regarding whether or not to recommend that the issue of the removal of Hon. Justice of Appeal Awich be investigated as:
- a. The question of the removal of the Hon. Justice of Appeal is premature, as determined by the JLSC, with regard to his seat on the Court of Appeal.
  - b. The evidence put before the Commission, by way of Complaint, did not amount to misbehaviour.
  - c. Regarding the question of inability to discharge the functions of his office, the Belize Constitution expressly states that the inability, whether arising out of body, mind or any other cause, is in direct correlation to the discharging of the functions of his office, i.e. the office of the Court of Appeal.
  - d. The JLSC properly exercised its discretionary power with regards to the passing of complaints to the BAC.

**The Question of Removal is Premature**

[127] It was implied by Counsel for the Defendant but not expressly submitted, that this was really a backdoor complaint about the Appointment process of Justice Awich to the Court of Appeal, and that there should have been a front door application for Judicial Review of the Governor General's decision to appoint him; and that the time-limit has now passed for such an application.

[128] It was also submitted that at the time that the present application was made Justice Awich had not yet sat and heard any matter as a Court of Appeal Judge in this jurisdiction and as such, as determined by the JLSC, the Complaint was misplaced and misguided and late in relation to his position of Supreme Court Judge and in relation to his appointment as Court of Appeal Judge, it was premature.

### Misbehavior – Not shown in the evidence presented to the JLSC

[129] It was submitted that under the Constitution of Belize a judicial officer could only be removed from office in circumstances where the integrity of the judicial function itself has been compromised. Alternatively (as per Lord Hope) where the conduct complained of is such that it is liable to bring the office into disrepute, and thus can be characterized as ‘misbehaviour’.

[130] It was also submitted that even where the behavior complained of can be characterized as misbehaviour, the JLSC has to determine if the conduct had risen to the gravity, applying the appropriate standard (in *Re Therrien*) requiring that a recommendation be made that the judge must [may] be removed.

[131] The Counsel for the Defendant submitted that the conduct complained of by the Claimants in the Complaint does not amount to misbehaviour.

### The Question of Inability to perform the function of his office

[132] It was submitted by the JLSC that the allegations raised by the evidence provided by the Claimants lends only to the issue of “inability” and not that of misbehaviour.

[133] It was also submitted that in any event the degree to which the inability exists, on the fact of the present case, is not sufficient to reach the threshold laid out.

[134] It was submitted by the Defendant that the evidence referred to in the Complaint raises a question of competence as referred to by Lord McCluskey in **Steward v Secretary of State for Scotland**<sup>43</sup>, and that the test to which the allegation of competence must then be measured is of a high threshold as alleged incompetence or mere error in the exercise of the judicial function is not sufficient to ground a justification for removal of a sitting Justice of Appeal.

### The Question of the extent of the Commission’s power

[135] It was submitted that the JLSC’s power under **Section 102(3) of the Constitution of Belize**, is a discretionary power within its discretion and also that it was an

---

<sup>43</sup> See Note 31 above\*.

administrative decision and not a judicial one as referred to by Lord Diplock in **Padfield V Minister of Agriculture, Fisheries and Food**<sup>44</sup>.

[136] Finally that the JLSC in the exercise of its discretionary power did not act unlawfully by refusing to refer the Complaint to the BAC, after its consideration of the Complaint.

### **Determination**

[137] In the discussion which will now follow I will relate the facts of the case to the law as I have determined it to be, and in the process arrive at definitive conclusions relating to the matters which require resolution; but will, of course, focus my attention on the central issue for determination namely the legality of JLSC's consideration of the Complaint (as mainly contained in the Decision): the question whether to refer Justice Awich's prior conduct (in relation to his alleged inability or misbehaviour) to the BAC for investigation.

[138] As a result of my present focus, I will have little or no regard for matters occurring since the JLSC considered and made the Decision.

[139] This approach may appear to involve some mental gymnastics as it may be difficult to imagine how the appointment process of Justice Awich could have been legal while entertaining the possibility that his conduct as a Supreme Court Judge may have disqualified him from holding such office and indeed the office of Court of Appeal Judge – *“that the process of selecting persons qualified for appointment as a judge may be so closely related to the exercise of considering the judicial function itself that it cannot be dissociated from it”*<sup>45</sup>.

[140] But that is the nature of the claims which are before this Court and this is therefore, in my view, the proper way for this Court to approach the matter. It is primarily a matter of reviewing the removal process of a Court of Appeal Judge in which the JLSC plays a constitutional role as distinct from the appointment process in which it does not.

---

<sup>44</sup> See [1968] A. C. 997 See note \* above.

<sup>45</sup> Re Therrien paragraph 116 of the Judgment of Gonthier J.

[141] I will further, immediately focus my attention on the question, whether the JLSC, as claimed by the Claimants, took into account, or did not take into account, as relevant, something which it ought, or properly ought not to have taken into account in deciding whether to exercise its constitutional discretionary power to recommend or not to recommend an investigation of Justice Awich's conduct to the BAC.

Did the JLSC err in law in the exercise of its constitutional discretionary power relating to consideration of the referral of the Complaint to the BAC for determination/investigation

[142] It is clear that in arriving at the Decision the JLSC clearly attached considerable importance to the view that Justice Awich's conduct as a Supreme Court Judge was irrelevant to his sitting as a Court of Appeal Judge.

[143] The first finding I will make therefore relates to the question of the significance of this finding by the JLSC, of the irrelevance of Justice Awich's prior conduct as a Court of Appeal Judge.

[144] It seems to me that it cannot be said that this decision relating to Justice Awich's prior conduct (possible inability or misconduct), on the facts of this case, was insignificant to the consideration by the JLSC of whether or not to refer the matter for investigation to the BAC.

[145] It clearly was significant, as the JLSC based its entire decision on it. The relevance of Justice Awich's prior conduct was determinative of the Decision.

[146] Also, the relevance of Justice Awich's prior conduct was clearly significant as the omission to take into account Justice Awich's alleged prior inability and/or misconduct operated by itself in Justice Awich's favour and against the Claimants as the person who claims to be aggrieved by the Decision (by bringing its complaint to an abrupt halt).

[147] The result of the position that the JLSC took was that they did not then proceed to consider whether the allegations of prior inability and/or misconduct were sufficiently serious to warrant a referral to the BAC.

- [148] This resulted, in my view, in the JLSC, because of the error they made in viewing the prior conduct of Justice Awich as irrelevant, not taking the next possible step in its consideration process – they did not move to the next step - of examining whether the material before them amounted to potentially credible evidence (or material) of inability or of serious misconduct to warrant an investigation, and thereafter considering whether to make a referral.
- [149] What is more, it appears to me, that the JLSC’s error went even further, in that they did not even examine the material or complaint beyond taking the step of hearing from Justice Awich on the material presented or the Complaint so as to ascertain whether Justice Awich’s prior conduct was at all material to the question it had to consider.
- [150] It does not appear to me, therefore, that the JLSC embarked on any of the subsequent steps of inquiring further into the allegations or complaints; which would have involved it observing the due process procedure namely: an enquiry, procedure or process invoking the fair play requirements relative to the contending parties (the Claimants and Justice Awich); or indeed embarking on or engaging in a process involving natural justice and fair play; or even engaging in any type of even mild ‘investigation’, much less probing, which might have been preliminary to a full blown inquiry prior to its deliberative process, which a due consideration of the complaint might otherwise have involved.
- [151] Further, the JLSC had not reached, or progressed the process, it seems to me, to the point that another part of the Constitutional process had envisaged, in its full discussion or ‘consideration’ of the merits of the complaint or materials before it, namely into determination of the relevance of the material and evidence contained in the Complaint.
- [152] In addition it appears that the constitutional process had not reached the stage of the JLSC making a determination of the nature of the allegations to ascertain where on the spectrum the evidence (or material) presented to the JLSC lay. That is, whether the allegations were of the “crack-pot variety”, “hopelessly groundless”, merely fanciful”, “fanciful”, incredible, or that such material (or



evidence) amounted to a prima facie case, arguable case, a case arguable with a realistic prospect of success, credible case; or even to the point where a determination could have been made as to whether there was such evidence (or material) before it that could have amounted to a strong enough case for Justice Awich to answer in relation to his conduct, such that the question of his removal could be investigated by the BAC.

[153] Thus, on the evidence before me it appears that the consideration by the JLSC of the matters before it in its enquiry had reached a very preliminary stage in the process of discharging its constitutional responsibilities on which it had embarked.

[154] I now turn to the question whether on the facts of the present case and the determination by the JLSC in relation to Justice Awich's conduct prior to his appointment to the Court of Appeal was irrelevant and therefore whether any consideration of the complaint was premature and therefore inappropriate.

[155] The case of **Therrien v Canada (Minister of Justice) and Anor**<sup>46</sup> is, in my view, good and clear authority for the proposition that even though the judicial conduct complained of occurred before the judicial appointment in question (to the Court of Appeal), as a matter of principle, there is nevertheless jurisdiction to investigate a judge's conduct prior to his appointment as a judge. This, it seems to me, in any event, to be the correct conclusion; but in the application of this principle the question of relevance will have to be determined on the facts of each case.

[156] The facts of the present case is that the conduct complained of involved Justice Awich as a judicial officer, and in my view, it cannot plausibly be said that prior conduct as a Supreme Court Judge, a senior judicial officer, is necessarily irrelevant to future conduct as a Justice of a Court of Appeal (a more senior judicial office). The position of Supreme Court Judge clearly may have relevance to the future conduct and the capacity of Justice Awich to discharge the duties of

---

<sup>46</sup> [2001] 2 R.C. S.

his judicial functions as a Court of Appeal Judge, and, which earlier conduct may reasonably undermine public confidence in his performance of this office.

[157] In this regard, the JLSC was, in my opinion, clearly wrong, as a matter of principle, in so far as they were suggesting that the request for the removal of Justice Awich was “misplaced and misguided” and premature as his appointment to a new office of Justice of Appeal was the commencement of a new situation.

[158] The appointment may have been a new situation but the question for consideration is whether his prior conduct or ability to discharge the function of his office of Supreme Court Judge (a judicial office) had become by the Complaint a live issue for determination, for the relevant reasons or causes stated therein, and whether any such consideration, is pertinent for assessing his ability to perform the functions of his office as a Justice of Appeal. Both offices (Justice of the Supreme Court and Justice of the Court of Appeal) are of a similar nature.

[159] What the JLSC should have engaged in was a consideration of the relevance of the allegations of inability or misbehavior as a Supreme Court Judge to his functioning as a Court of Appeal Judge – which they signally failed to do.

[160] It is clear that the Hon. Dean O. Barrow, Prime Minister of Belize in his letter to the Hon. Francis Fonseca, Leader of the Opposition, dated 19<sup>th</sup> April 2012 clearly appreciated the need to frame the discussion and consideration of Justice Awich’s ability in this way (in view of the objections that had been raised to his appointment), because in explaining his reasons for his appointment he specifically referred to, and sought to answer the criticisms which had been raised against Justice Awich relating to his alleged prior inability and misconduct a Supreme Court Judge.

[161] What could such a ‘consideration’, by the JLSC, have looked like, one might ask?

[162] Such a consideration may have involved even a mild ‘investigation’, or even a little probing (which would inevitably have involved soliciting Justice Awich’s explanation) into the allegation of:

(a) Justice Awich's delay of delivery of judgments and the systemic or personal reasons for such delays.

(b) Justice Awich's alleged demonstrations of repeated disregard of his duties as a judge by violating basic rights of the parties and rules of natural Justice, and that he also administered justice in an inefficient and irrational manner.

which may or may not have amounted to potentially credible evidence or material of inability or of serious misconduct to warrant a recommendation to the BAC to investigate Justice Awich.

[163] These allegations, in my opinion, which when made by the Bar Association of Belize, one hopes, cannot be described to be a 'crack-pot' organization likely to make up 'fanciful' or 'groundless' claims of a Judge's misconduct or inability, and may therefore possibly, if not likely yield 'potentially credible evidence' worthy, at the very least, of investigation.

[164] Also, the examples of prior misconduct relating to delays and other difficulties in delivering judgments and to judicial acumen were the subject of Court of Appeal and Caribbean Court of Justice decisions. Again, it cannot be said that such sources might not possibly, if not likely yield 'potentially credible evidence' worthy, at the very least, of investigation.

[165] It therefore seems to me inappropriate to dismiss such claims of prior serious misconduct as not deserving some consideration – on the basis that a different appointment to a judicial office constitutes a new situation which has to be considered on different terms and using different considerations.

[166] Again the investigation may have resulted in such allegations being found to have been misplaced or groundless but it cannot be said, in my view, that the recommendation of such an investigation should not be considered.

[167] The JLSC may then have found or concluded, upon such enquiry or mild investigation or probing, that the material (or evidence) presented to it may have amounted to a "mere lack of efficiency or competence per se" not amounting to inability or incapability of performing the proper function of a judge at all. But it

seems to me that, prima facie, in relation to the delays in the delivery of judgments, the decisions of the Court of Appeal of Belize itself, and also the final appellate court of Belize, the Caribbean Court of Justice, would certainly amount to potentially credible evidence which the JLSC ought to have considered in this context and not to have totally disregarded

[168] In relation to the allegation that Justice Awich's allegedly demonstrated repeated disregard of his duties as a judge by violating basic rights of the parties and rules of natural Justice, and that he also administered justice in an inefficient and irrational manner, the JLSC may have found, following an enquiry or mild probing, that this is an allegation without merit or, alternatively they could have quite properly have found, it to be credible evidence worthy, at the very least, of investigation.

[169] I am fortified in my view that such an allegation of prior misconduct, ought to have been entertained by the JLSC because it is clear that the applicable law requires that misconduct "need not occur in the course of the performance of the duties of the office" but "is to be determined by reference to the effect of the conduct on the capacity of the person to continue to hold the office"<sup>47</sup>.

[170] I also find, and it follows from what I have just said, that the evidence put before the JLSC was capable of amounting to and therefore could have amounted to misbehaviour. Likewise the question of inability to discharge the functions of the office related to the office of the Court of Appeal.

[171] I have therefore concluded, based on my above findings that the JLSC did not properly exercise its discretionary power with regards its consideration of the passing of complaints to the BAC.

[172] I therefore find that the JLSC erred in law and misdirected itself as to its powers in the following three respects:

- a. By failing to take into account Justice Awich's prior conduct in its consideration of the question which it had to consider.

---

<sup>47</sup> See the Judgment of Gray J in the case of Clarke v Vanstone referred to in paragraph \* above.

- b. Acted beyond its powers in preventing Justice Awich's prior conduct from being considered by it and possibly being the subject for investigation by the BAC.
- c. Misunderstood its Constitutional role regarding the removal of Justices of Appeal from office.

[173] I do not, however, make any finding as to the seriousness of the matters complained of or whether it was irrational for the JLSC not to refer such matter to the BAC. In my view the appropriate course of action would be for me to make the appropriate declaration and leave it to the JLSC to reconsider its position in view of the declarations and in according with the law that this court has found which this court makes with a view to further conducting its enquiry and arriving at its own lawful determination.

[174] In view of my findings I am therefore prepared to make a declaration that Mr. Justice Awich's conduct as a Supreme Court Judge, prior to his appointment as a Justice of Appeal, is relevant to the question of "inability to perform the functions of office" or "misbehaviour" under section 102(2) of the Belize Constitution in relation to the JLSC's consideration of the complaint, and ought to be entertained by the JLSC and reconsidered by them.

[175] It is also clear, based on my findings above, that it is also appropriate to make a Declaration that the decision of the JLSC dated 14th November 2012, for the reason it has given, declining to refer the Claimants' request dated 17<sup>th</sup> July 2012 to the BAC under section 102(3) of the Belize Constitution as set in the Complaint, is unlawful, void and of no effect.

### **Costs**

[176] In view of the finding which I have made I do not consider it appropriate at this time to make an order for costs one way or another but would reserve my decision on this issue and I give both parties liberty to apply to this Court in relation to costs.

## **Disposition**

[177] For the reasons given above, this Court declares that Mr. Justice Awich's conduct as a Supreme Court Judge, prior to his appointment as a Justice of Appeal, in the circumstances of the case presented to this court, is relevant to the consideration of the question of "inability to perform the functions of office" or "misbehaviour" under section 102(2) of the Belize Constitution in the JLSC's consideration of the Complaint, and ought to be entertained by the JLSC and reconsidered by them.

[178] This Court also declares that the Decision of the JLSC dated 14th November 2012, declining to refer the Claimants' request dated 17th July 2012 of the conduct of the Hon. Justice of Appeal Awich to the BAC under section 102(3) of the Belize Constitution as set in the Complaint, is unlawful, void and of no effect.

[179] Costs are reserved.

---

**The Hon Mr. Justice Courtney A. Abel**